

### **REMARKS**

Claims 90, 92-107, 109-110, 112-121, 123-124, 126-137 are pending in this application, with claims 90, 107, 121, 135, 136, and 137 being independent.

No new issues are raised. Independent claims 90, 107 and 121 have been amended to incorporate the subject matter of dependent claims 91, 108, and 122, respectively, which have been cancelled. Independent claim 135 has been amended to correct a typographical error, and independent claim 137 has been amended according to the Examiner's suggestion to overcome a rejection under 35 U.S.C. § 101. These changes do not raise new issues. Rather, they merely change the form of previously recited dependent claims 91, 108 and 122. Therefore, it is proper to enter this amendment, notwithstanding the final status of this case.

#### **35 U.S.C. § 101 Rejection**

Claim 137 stands rejected under 35 U.S.C. § 101 because the preamble fails to recite a "computer readable medium." Applicant has amended the preamble of claim 137 to recite a "computer readable medium," obviating this rejection. For consistency, Applicant also has amended the preamble of claim 121 to recite a "computer readable medium."

#### **35 U.S.C. § 103(a)**

##### **Bunting/Herz Rejection**

Claims 90, 92-107, 109-110, 112-121, 123-124, 126-134 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Bunting *et al.* (U.S. Patent No. 6,134,530) in view of Herz *et al.* (U.S. Patent App'l Pub. No. US 2001/0014868). This rejection is obviated by the amendments to independent claims 90, 107 and 121 in view of Applicant's remarks.

Bunting discloses, in pertinent part, routing service calls based on a customer profile to improve customer service and to identify cross-sell opportunities. Herz discloses, in pertinent part, automatically tracking the purchasing behavior of shoppers and automatically constructing product offers tailored to those shoppers based on the tracked results. Neither Bunting nor Herz

describe or suggest leveraging an incoming service call for assistance as a conduit to present a sales pitch to the caller based on a sales pitch preference that includes a preference of the caller not to receive one or more undesired sales pitches, as required by amended independent claims 90, 107 and 121. Applicant requests, therefore, reconsideration and withdrawal of the § 103(a) rejections of those claims and of the claims that depend from them.

More specifically, independent claim 90 recites using a sales pitch preference of a telephone caller, including a preference of the caller not to receive one or more undesired sales pitches, to select a first sales pitch appropriate for that telephone caller. Before receipt of the incoming service call from the caller, a sales pitch preference of the caller including a preference of the caller not to receive one or more undesired sales pitches is stored as an additional attribute. A caller identity and/or a first attribute of the caller are determined and used to access from a first database the additional attribute that indicates the sales pitch preference of the caller including the preference of the caller not to receive one or more undesired sales pitches. The sales pitch preference, including the preference of the caller not to receive one or more undesired sales pitches, is used to select an appropriate sales pitch from within a second database of potential sales pitches. The caller then is routed to a human operator and the human operator is assisted by the computer to present the sales pitch to the caller.

Bunting and Herz differ materially from the teachings of the claimed invention. In the method of Bunting, a customer call is received and routed to an appropriate service resource by “matching sales and service resource skill profiles with a customer profile, contact type and request type.” Bunting at 4:18-22. Bunting describes that the customer profile may include “a language, a type of customer, a segment, a request type and product(s)” and may be used to group like customers based on “their demographics, behaviors, values, current products used and the current and potential value of the customer to the company’s business.” Bunting at 4:23-45. Bunting does not disclose or suggest, whether in its customer profile or elsewhere, a sales pitch preference of the caller that includes a preference not to receive one or more undesired sales pitches. The Final Office Action of January 26, 2005 does not suggest otherwise.

Herz does not cure this deficiency. In the method of Herz, a salesperson makes an “offer” to a potential customer based on an offer profile that includes attributes of the offer (e.g., product description, price), and on a shopper profile that includes attributes of the potential customer (e.g., demographic or psychographic attributes). Herz at ¶¶ 270-274. A user interface may allow the salesperson to work with offer profiles and shopper profiles and, through data mining, “to identify certain correlations between the present user (and/or his/her unique attributes including domain specific price sensitivity), product/offer affinities, optimal sales pitches (or supplemental materials used in facilitating the sales process), probable statistically predicted next responses of the customer in response to each offer and/or sales pitch, likely additional attributes (e.g., psychographic) which can be inferred about the user based on feedback from the other attribute sources.” Herz at ¶ 277.

Notably, none of the aforementioned Herz features describe or suggest storing, prior to the receipt of a caller’s incoming service call, a sales pitch preference of the caller that includes the caller’s preference not to receive one or more undesired sales pitches. Herz also fails to disclose the step of “identify[ing] a first sales pitch that is not one of the one or more undesired sales pitches based upon at least the additional attribute of the caller,” as recited by claim 90.

In short, both Bunting and Herz fail, whether alone or in combination, to describe or suggest “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive one or more undesired sales pitches,” or “identify[ing] a first sales pitch that is not one of the one or more undesired sales pitches based upon at least the additional attribute of the caller.” Claim 90 is allowable for at least these reasons.

Claims 92-106 depend from claim 90 and are allowable for at least the reasons given for claim 90.

Furthermore, dependent claim 92 additionally describes that the sales pitch preference includes a preference not to receive any sales pitch. Neither Bunting nor Herz, alone or in combination, describe or suggest such a feature. Claim 92 is allowable for at least this additional reason.

Independent claims 107 and 121 are directed to a system and to a computer program, respectively, for using a sales pitch preference of a telephone caller of a telephone call, including a preference of the caller not to receive one or more undesired sales pitches, to select a first sales pitch appropriate for that telephone caller. Claims 107 and 121 each recite either components or code segments that perform the functions of “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive one or more undesired sales pitches,” and of “identify[ing] a first sales pitch that is not one of the one or more undesired sales pitches based upon at least the additional attribute of the caller, wherein the additional attribute comprises a sales pitch preference of the caller.” (emphasis added). As detailed above, neither Bunting nor Herz, alone or in combination, describe or suggest these claim limitations. Thus, for at least these reasons, claims 107 and 121 are allowable over Bunting, in view of Herz..

Claims 109-110, 112-120, 123-124 and 126-134 each depend from either claim 107 or claim 121 and are allowable for at least the reasons given for claims 107 and 121. Moreover, claims 109 and 123 are generally similar to claim 92 and are allowable for at least the additional reason given for claim 92.

For at least the reasons discussed above, Applicant respectfully requests allowance of claims 90, 92-107, 109-110, 112-121, 123-124, 126-134.

#### Bunting/Herz/”Online Stores” Rejection

Claims 135-137 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Bunting in view of Herz, and in further view of the article “Online Stores Hope Shoppers say Aye to Watchful Assistants” (“Online Stores”). Applicant respectfully traverses this rejection, and requests allowance of claims 135-137 in view of Applicants remarks.

Independent claim 135 recites a method for leveraging an incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. Before receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller is stored in a first database. A caller identity and/or a first attribute of the caller are

determined and used to identify the information indicative of the caller's past misbehavior. Based on the information of past misbehavior, a second database that stores potential sales pitches is not searched, and the information of past misbehavior is used to route the caller to a human operator and to assist the operator in taking the call.

In relevant part, Bunting discloses routing service calls based on a customer profile to improve customer service and to identify cross-sell opportunities. Herz discloses, in pertinent part, automatically tracking the purchasing behavior of shoppers to automatically construct product offers tailored to those shoppers. Online Stores discloses, in relevant part, an online representative monitoring a consumer's online shopping activity and contacting the consumer online with an offer for help if it appears that the consumer is having difficulty (e.g., filling out a form or finding a desired product). Notably, none of Bunting, Herz or Online Stores, alone or in combination, describe or suggest receiving an incoming service call for assistance, storing information of past misbehavior before the call is received—and using the information of misbehavior to omit to search a second database for a sales pitch, to rout the service call to an operator, and to assist the operator to take the call—as required by independent claims 135, 136 and 137. Applicant requests, therefore, reconsideration and withdrawal of the § 103(a) rejections of those claims.

As the Final Office Action concedes, Bunting does not disclose receiving an incoming service call for assistance or storing information of past misbehavior before the call is received. Bunting also does not disclose the steps of omitting to search a second database for a sales pitch and routing the service call to an operator—each based on previously stored information of past misbehavior. Neither Herz nor Online Stores cures these deficiencies. Herz does describe a shopper profile that includes “descriptive terms such as ‘hostile,’ ‘chatty,’ and ‘haggler,’” but fails to describe how those terms are used. *See* Herz at ¶ 274. In sum, Herz does not disclose using any information of past misbehavior to omit to search a second database for a sales pitch, or of using information of past misbehavior to rout the caller to an operator and to assist the operator to take the call, as recited by claim 135.

The disclosure of Online Stores also differs materially from the claimed invention. Among other things, Online Stores discloses providing a human representative to monitor a customer's online shopping behavior and to initiate contact with the customer if it appears that the customer requires help: "Our software has the power to initiate contact . . . . We don't have to wait for someone to ask for help." Online Stores at p. 2. This disclosure teaches away from the claimed invention which includes receiving a call from a caller and routing the caller to an operator, rather than initiating contact with the caller as taught by Online Stores.

In addition to its failure to disclose receiving a service call, Online Stores also does not disclose storing information of prior misbehavior prior to receiving that call. Online Stores also does not disclose a second database of stored sales pitches; nor does it disclose omitting to search the second database based on the information of past misbehavior and routing the call to an operator based on the information of past misbehavior. Plainly, Online Stores lacks many material features of the claimed invention.

Claim 135 is allowable for at least these reasons.

Independent claims 136 and 137 are directed to a system and to a computer program, respectively, for receiving an incoming service call for assistance, and storing information of past misbehavior before the call is received. Both claims also recite using the information of misbehavior to omit to search a second database for a sales pitch, as well as to rout the service call to an operator and to assist the operator to take the call. Whether alone or in combination, Bunting, Herz, and Online Stores do not describe or suggest these claim limitations. For at least these reasons, claims 136 and 137 are allowable over Bunting in view of Herz, and in further view of Online Stores.

For the reasons discussed above, Applicant respectfully requests allowance of claim 135-137.

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